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The Macroeconomic Imbalance Procedure as European Integration: A Legalisation Perspective

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ABSTRACT *The Macroeconomic Imbalance Procedure seeks to prevent and correct destabilising economic imbalances in the European Union. Scholars are divided as to whether this instrument of economic policy coordination relies on the same intergovernmental modes of decision-making as the Broad Economic Policy Guidelines or reflects supranational institutions more significant role in EU economic policy following the euro crisis. Such diametrically opposed interpretations are symptomatic of longstanding concerns over the lack of a clear-cut definition of European integration. To address these definitional difficulties, this paper turns to the concept of legalisation. Taking account of the design and early implementation of the Macroeconomic Imbalance Procedure and using the Broad Economic Policy Guidelines as a point of comparison, it shows that the former can be understood as a modest but clear-cut increase in legalisation compared to the latter. On this basis, it considers whether legalisation, in spite of its own conceptual limitations, can contribute to a more rigorous definition of European integration.*

KEY WORDS European integration; definition; legalisation; Macroeconomic

Imbalance Procedure; euro crisis

INTRODUCTION

The euro crisis, which began in late 2009, exposed significant shortcomings in the governance of Economic and Monetary Union (EMU) and set in motion sweeping reforms.¹ For this reason, the crisis has rekindled interest in integration theory (Ioannou, Leblond, and Niemann 2015) but have recent reforms really spurred European integration? From the six-pack to the two-pack, from the Euro Plus Pact to the Fiscal Compact, from European Banking Union to the Commission's Plans for a

Genuine EMU, there has been no shortage of reforms but it is not self-evident what this means for European integration.

Part of the six pack – a set of six reforms enacted in December 2011 – the Macroeconomic Imbalance Procedure seeks to prevent and, if necessary, correct macroeconomic developments that jeopardise ‘the proper functioning of the economy of a Member State or of economic and monetary union, or of the Union as a whole’.² The buildup of growth and inflation differences, large current account deficits and housing bubbles in a number of member states contributed to the euro crisis (Buti and Carnot 2012, 909). The procedure seeks to avert these and other imbalances by giving the Commission responsibility over a scoreboard of macroeconomic indicators. Where, on the basis of these indicators, the Commission sees grounds for concern over imbalances, member states face an in-depth review of their economic policies. Where the Council agrees with the Commission that a member state is in a state of excessive imbalance, the country in question faces recommendations for corrective action and, in extremis, interest-bearing deposits and non-refundable fines.

For Scharpf (2011, 29), the Macroeconomic Imbalance Procedure ‘replaces the rule-based approach of the Stability and Growth Pact with a highly discretionary regime of supranational economic management’. Moschella (2014, 1285), in contrast, argues that the procedure lacks ‘mechanisms to prevent political and arbitrary considerations from interfering with decisions to activate sanctions and how to share the burden of adjustment’. Bauer and Becker (2014, 213) steer a middle course by treating the Macroeconomic Imbalance Procedure as part of a package of reforms that gives the Commission a more prominent role and so ‘qualifies the degree of intergovernmentalism in [European] economic governance’. Such differences in interpretation matter because establishing the degree of European integration involved

is essential for understanding whether and how the EU has been transformed by the euro crisis. This understanding is not only important for scholarly debates but also political discussions about the future of Europe. For instance, in his Bloomberg speech, UK Prime Minister David Cameron cited the drive towards ‘deeper integration in the Eurozone’ as a justification for UK’s ill-fated referendum on EU membership (Cameron 2013).

This paper asks, in the light of this debate, whether the Macroeconomic Imbalance Procedure is an instance of integration. The aim is not to draw causal inferences about integration; this is not because explanation is viewed as unimportant but rather because a robust definition of integration is viewed as a prior condition for valid inference. Nor is the aim to generalize about integration since the euro crisis. It is, rather, to use the Macroeconomic Imbalance Procedure as a disciplined interpretive case study (Odell 2001, 163) that illustrates the challenges of defining integration.³ Concerns over the lack of a clear-cut definition of integration are longstanding (Haas 1970; Puchala 1971; Wallace 1990; Chryssochoou 2008) but this problem is worsening. This is because integration has, according to some accounts, intensified since the Maastricht Treaty but without delegating new powers to the Commission for the most part (Bickerton, Hodson, and Puetter 2015). While some see the emergence of a ‘stable institutional equilibrium’ in the EU since the 1990s (Moravcsik 2002, 603) others observe a steady accretion of supranational decision-making during this period (Schimmelfennig 2015). The EU, as Ben Rosamond (2000) puts it, has a dependent variable problem.

To deal with these definitional difficulties, this paper turns to the concept of legalisation (Abbott et al. 2001). A pioneering attempt to link theories of law and international politics, but one that has gained limited traction in studies of European

integration, legalisation conceptualizes institutionalized cooperation between states along three dimensions: obligation, which measures the extent to which states are bound by the rules governing cooperation; precision, which concerns the ambiguity of these rules; and delegation, the extent to which authority over the interpretation, implementation, application and, perhaps even, the revision of these rules rests with a third party. Applying this concept of legalization and using the Broad Economic Policy Guidelines as a point of comparison, this paper finds that the Macroeconomic Imbalance Procedure amounts to a modest increase in obligation, precision and delegation in EU economic policy coordination.

Legalisation offers greater rigour than traditional definitions of integration but it is not, this paper acknowledges, unproblematic. Firstly, while it offers a rich view of delegation, legalisation lacks a readymade means for understanding the deliberative dimension to integration. Secondly, legalisation rests uneasily with the idea of integration as a phenomenon propelled by the functioning of institutions as much as by their foundation. These limitations caution against a simplistic equation of integration and legalisation but there is scope for developing the concept of legalisation to understand better the nuances of integration. On the first point, this paper challenges scholars' reluctance to explore the effects of legalisation. On the second, it sees deliberation and legalisation as intertwined and calls for further reflection on the conditions under which legalisation is likely to foster deliberation.

1. THE MIP AND THE PROBLEM OF DEFINING EUROPEAN INTEGRATION

In his essay on what makes a good concept, John Gerring (1999) includes familiarity, resonance, parsimony and theoretical utility. Judged in these terms, Ernst Haas'

pioneering definition of integration is familiar and resonant but it falls short in other respects for understanding an instrument such as the Macroeconomic Imbalance Procedure. Haas (1958, p16) defined integration as ‘the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states’. This definition is familiar in so far as it chimes with ordinary language usage of integration and resonant in as much as Haas’s definition remains widely cited after six decades. But, by requiring the analyst to judge the behavior and motivations of an unspecified number of political actors over an indeterminate time period, it lacks parsimony. Problematic from the point of view of theoretical utility is how Haas folds neo-functional claims about loyalty transfer as a driver of integration into his definition.

Rather than cutting back Haas’s definition, Lindberg added to it the idea of integration as a ‘process whereby nations forgo the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs’ (1963, 6). Haas (1970, 633) himself later toyed with more abstract alternatives, including integration as a form of ‘authority-legitimacy transfer’ for which the concept of ‘institutionalization’ could serve as a proxy. Sandholtz and Stone Sweet (1998) and Stone Sweet, Sandholtz and Fligstein (2001) developed this idea of integration as institutionalisation. In the first of these volumes, the authors decoupled Haas’s original conception of integration from his claims about loyalty transfer to arrive at a definition of integration as ‘the process through which supranational governance—the competence of the European Community to make binding rules in any given policy domain—has developed’ (Sandholtz and Stone

Sweet 1998). In the second, the authors abstract from supranational governance to explore the idea of political integration as institutionalisation (Caporaso and Stone Sweet 2001, p. 265).

Defining integration as institutionalisation runs the risk of being both too broad and too narrow. This tension can be seen by comparing two contributions to Sandholtz and Stone Sweet's (1998) study of supranational governance. Whereas Smith (1998, 330) makes a plausible case that that modest institutionalisation of foreign policy cooperation at Maastricht is a step closer to supranational policy-making, Cameron (1998, 213) dismisses the Treaty's (arguably more elaborate) provisions on economic policy coordination as creating 'no new authority or institutional capacity'. Viewed in these terms, it is uncertain whether the Macroeconomic Imbalance Procedure counts as integration or not.

The legalisation literature narrows the field of inquiry by focusing on those instances of institutionalisation characterized by a 'move to law' (Goldstein et al. 2001:1). This study interrogates the concept of legalisation through detailed case studies of dispute resolution (Keohane, Moravcsik, and Slaughter 2001), the EU's legal system (Alter 2001), the North American Free Trade Association (Abbott 2001), regional cooperation in the Asia-Pacific region (Kahler 2001), international monetary affairs (Simmons 2001), global trade (Goldstein et al. 2001) and human rights (Lutz and Sikkink 2001). References to European integration in this work are sparse. Even Alter's (2001) wide-ranging discussion of European law keeps the concepts of integration and legalisation well apart.

More puzzling still is why legalisation has not gained more traction in the integration literature. EU governance scholars have engaged extensively with the concept (Armstrong and Kilpatrick 2006; Treib, Bähr, and Falkner 2007) but this

literature distances itself from the concerns of integration theory in favour of fine-grained analysis of EU policy-making (Kohler-Koch and Rittberger 2006). Schäfer (2006, 70) engages with legalisation in his study of EU economic surveillance but he takes as his point of departure ‘shifting foci from integration to governance to “Europeanization”’. Schelkle (2006) offers an even more in depth treatment of legalisation in her analysis of the Stability and Growth Pact, but she makes only passing reference to integration. Radulova (2007) says more on the links between integration and legalisation but her focus is more on the open method of coordination than conceptualizing European integration per se.

2. A LEGALISATION PERSPECTIVE ON THE MACROECONOMIC IMBALANCE PROCEDURE

A question that warrants consideration before proceeding further is whether legalisation can capture, what Stone Sweet and Sandholtz (1997: 299) refer to as, the ‘crucial temporal elements of European integration’. One view is that legalisation is better suited to comparative statics, i.e. comparing the degree of obligation, precision and delegation across regimes at a point in time, than dynamic analysis, i.e. change within a particular regime over time. Although the cases selected by Goldstein et al. (2001) reinforce this point – as in Kahler’s (2001) comparison of the Association of South East Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC) – Abbott et al. (2001: 21) accept that legalisation can vary ‘within a given instrument or regime over time’. Indeed, Goldstein et al. (2001, 5) cite the Court’s role in constitutionalising the Treaty of Rome as an example of legalisation over time. This section steers a middle course between static and dynamic analysis by comparing the legalisation of the Macroeconomic Imbalance Procedure with that of the Broad

Economic Policy Guidelines, an earlier instrument of economic policy coordination.

Obligation

Obligation describes an institutional arrangement in which states ‘are bound by a rule or commitment or by a set of rules or a commitment’ (Abbott et al. 2001, 17). To count as legalisation, this obligation should be reliant on law – by which the authors mean legal norms, procedures and appeals to legal reasoning – rather than ‘coercion, comity or morality alone’ (Abbott et al. 2001, 17). World Trade Organisation law counts as obligation by this standard but not the OECD’s Guidelines on Multinational Enterprises because the latter rely on recommendations and guidelines rather than law. Defined thus, it might be difficult to see the Macroeconomic Imbalance Procedure as imposing meaningful obligations. Such a judgement would be hasty, however, since obligation – as with the other indicators of legalisation – is not a dichotomous variable; it exists instead on a continuum ranging from expressly non-legal norms to *jus cogens* i.e. an international legal rule from which no derogation is possible (Abbott et al. 2001, 20). In these terms, the Macroeconomic Imbalance Procedure is not strongly binding. Regulation (EU) No 1176/2011 states that ‘[a]ctions to address macroeconomic imbalances...are required in all Member States’ but such tough talk is reserved for the recital rather than the main body of the regulation.⁴ Recitals in EU regulations matter for the interpretation of legislation but they are not binding.

The first Broad Economic Policy Guidelines were adopted in 1993. Under the Maastricht Treaty, EU member states agreed to ‘conduct their economic policies with a view to contributing to the achievements of the objectives of the Community...and in the context of the broad guidelines’, the guidelines in question being adopted by the

Council on a recommendation from the Commission and after taking account of the views of the European Council.⁵ Member states' obligation to these guidelines under the Treaty was low. Member states were, for example, obliged under the Treaty to 'forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary'.⁶ Member states that breached the broad guidelines faced the possibility of warnings from the Commission and recommendations from the Council. This conception of obligation is close to what Dehousse and Weiler (1990: 250) call 'procedural obligation', with its emphasis on information, consultation and concerted action' rather than uniform obligations arising from, say, judicial decisions.

In terms of procedural obligation, the Broad Economic Policy Guidelines are thin. Under Article 121(6) TFEU, the Council and Parliament can, acting on a recommendation from the Commission, adopt 'detailed rules for the multilateral surveillance procedure'. This provision was never activated for the Broad Economic Policy Guidelines, which in 2005 was subsumed into a new set of Integrated Guidelines for Growth and Jobs along with the Employment Guidelines. The Macroeconomic Imbalance Procedure is underpinned by two instances of secondary law, the Council and Parliament having adopted 'detailed rules for the multilateral surveillance procedure' for the first time. Regulation (EU) No 1176/2011, which concerns the prevention and correction of macroeconomic imbalances, imposes no unconditional obligations on member states' economic policies but the obligations it does impose are harder than those that applied to the Broad Economic Policy Guidelines. Specifically, member states are required under the Macroeconomic Imbalance Procedure to prepare a corrective action plan in cases where the Council decides that an excessive imbalance exists and corrective action is required.⁷

Regulation (EU) No 1176/2011 adds to this obligation by providing for the possibility of financial penalties, ranging from an interest-bearing deposit to an annual fine, against member states that fail to take corrective action. This pecuniary dimension to the Macroeconomic Imbalance Procedure is in addition to a more stringent monitoring mechanism.⁸ Member states affected by – or at risk of – imbalances will be subject to an in-depth review by the Commission, which may include surveillance missions to the member state in question to meet with the relevant authorities. Such monitoring is accompanied by a set of country-specific recommendations proposed by the Commission and adopted by the Council, these recommendations being the successor to the Integrated Guidelines for Growth and Jobs.

Precision

Precision refers to an institutional arrangement that spells out ‘clearly and unambiguously what is expected of a state’ (Abbott et al. 2001, 28). High levels of precision leave limited room for interpretation, according to this approach, whereas low precision makes it difficult to distinguish between compliance and non-compliance.⁹ Defined thus, the Broad Economic Policy Guidelines entailed a very low degree of precision. The Treaty offers no explicit statement of what the guidelines should cover, this matter being left for the Commission to propose in its draft recommendations and the Council to decide in the final version of the guidelines. One consequence of this was that the number of guidelines increased from four in 1993 to more than 100 in 2003, making it harder to distinguish compliance from non-compliance and so reducing the precision of the Broad Economic Policy Guidelines (Deroose, Hodson and Kuhlmann 2008: 834). The launch of the Integrated Guidelines in 2005 sought greater precision here by capping the economic and employment

guidelines to 10 general recommendations, but this cap was a political choice rather than a legal requirement and, moreover, one that was hindered by the generality of what the ten guidelines asked of member states. A case in point concerned the Integrated Guidelines' aim of '[r]educing imbalances in the euro area' (Commission 2010, 9). The Council made clear that euro area member states facing a 'persistent lack of competitiveness' should 'reduce real unit labour costs' (Commission 2010, 10) but it made no attempt to spell out what it understood by persistence and reduction in this context.

The Macroeconomic Imbalance Procedure is more than the Broad Economic Policy Guidelines. Secondary legislation, again, plays an important role by offering a definition of 'excessive imbalances'. Regulation (EU) No 1176/2011 defines imbalances as 'any trend giving rise to macroeconomic developments which are adversely affecting, or have the potential adversely to affect, the proper functioning of the economy of a Member State or of the economic and monetary union, or of the Union as a whole'. Excessive imbalances are defined as 'severe imbalances, including imbalances that jeopardise or risk jeopardising the proper functioning of the economic and monetary union'.¹⁰ Neither definition has the precision of the excessive deficit procedure, which focuses on a narrow range of fiscal variables, but both move beyond the low level of precision in the Broad Economic Policy Guidelines.

The Macroeconomic Imbalance Procedure also goes beyond the Broad Economic Policy Guidelines by specifying a timetable for surveillance. The Treaty states only that the Council should adopt guidelines not when it should do so. Under the Macroeconomic Imbalance Procedure, the Commission is required to prepare an annual alert mechanism report on the basis of which it will decide which, if any member states, should be subject to an in-depth review.¹¹ Member states that are

declared by the Council to be in a state of excessive imbalance are required to prepare a corrective action plan within a timeframe specified by the Council, which is required, in turn, to evaluate this plan within two months. Should the Council decide that this corrective action plan falls short, then the member state in question would be given a further two months to put forward a revised plan. Regulation (EU) No 1174/2011 provides an additional timetable for decisions on sanctions against euro area members that fail to correct excessive imbalances. Once the Council adopts two successive decisions that a member state has (a) submitted an insufficient corrective action plan or (b) failed to comply with earlier recommendations for corrective action, the Commission has 20 days to put forward a recommendation to the Council to impose financial penalties on the country in question.¹²

Also significant from the point of view of precision are the provisions in Regulation (EU) No 1176/2011 concerning the creation of a scoreboard ‘to facilitate early identification and monitoring of imbalances’.¹³ The regulation states that the scoreboard should include ‘relevant, practical, simple, measurable and available macroeconomic and macrofinancial indicators’.¹⁴ It also gives a non-exhaustive list of the kinds of imbalances that the scoreboard should detect, including issues relating to housing, public and private indebtedness, export market shares and price and cost developments, and provides guidance on the indicative thresholds to be used for detecting excessive imbalances.¹⁵

More precise though the Macroeconomic Imbalance Procedure is compared to the Broad Economic Policy Guidelines, the former’s precision should not be overstated. For one thing, the legislation underpinning the latter leaves it up to the Commission to devise and revise the scoreboard and choose thresholds. This may enhance the degree of delegation, as discussed below, but it works against the procedure’s precision by

introducing uncertainty about what is being asked of member states. This contrasts with the excessive deficit procedure, which is accompanied by a Treaty Protocol that identifies specific indicators and establishes specific reference values for assessing compliance.¹⁶

Also problematic from the point of view of precision is the fact that the recital of Regulation (EU) No 1176/2011 cautions against an ‘automatic reading’ of the scoreboard and makes clear that the breach ‘of one or more indicative thresholds need not necessarily imply that macroeconomic imbalances are emerging’. This point is of more than interpretive importance. The regulation itself makes clear that the Commission should not draw conclusions about the existence of – or potential for – imbalances ‘from a mechanical reading of the scoreboard indicators’.¹⁷ Instead, it instructs the Commission to undertake an ‘economic reading’ that encompasses ‘developments in the real economy, including economic growth, employment and unemployment performance, nominal and real convergence inside and outside the euro area, productivity developments and its relevant drivers such as research and development and foreign and domestic investment, as well as sectoral developments including energy, which affect GDP and current account performance’.¹⁸

For Moschella (2014, 1282), the Macroeconomic Imbalance Procedure’s reliance ‘on clearly specified indicators...may help increase the precision and practicality of the EU recommendations’. She is right to see scope for greater clarity compared to IMF Article IV surveillance, which oversees compliance with ‘general obligations’ such as the pursuit of price stability and exchange rate stability.¹⁹ However, it is uncertain how clear the Macroeconomic Imbalance Procedure can truly be given the procedure’s concern for such a wide range of imbalances, the degree of discretion it

grants to the Commission in compiling the scoreboard and its insistence on an economic rather than a mechanistic reading of these indicators.

Delegation

Delegation concerns the extent to which ‘states and other actors delegate authority to designated third parties...to implement agreements’ (Abbott et al. 2001, 31). Where delegation is high, this third party can make binding decisions on states but where these states can engage in political bargaining over such decisions delegation is low. Defined in these terms, the Broad Economic Policy Guidelines entail only a limited degree of delegation. Under the Maastricht Treaty, the Commission was given responsibility for submitting draft guidelines to the Council and for initiating the process of issuing a recommendation in the event of non-compliance by a member state. This authority, while important, did not extend to policy formulation, with the Council charged with adopting the draft and final versions of the guidelines and issuing recommendations for corrective action. The Lisbon Treaty made a minor change by allowing the Commission to issue a direct warning to member states that breached the broad economic guidelines or otherwise jeopardized the smooth functioning of EMU. These arrangements gave the Commission greater discretion over the content and enforcement of the guidelines, but they did little to limit the scope for political bargaining between member states. Decisions on whether the Council should issue a recommendation against a member state still required a qualified majority, which may explain why only two member states were subject to recommendations for non-compliance between 1993 and 2013.²⁰

The Macroeconomic Imbalance Procedure involves greater delegation to the Commission in two ways. Firstly, it gives the Commission a fairly free hand when it

comes to choosing imbalance indicators and determining indicative thresholds for the scoreboard. Although secondary legislation sets broad parameters on the purpose and broad content of the scoreboard, the Commission is responsible for preparing and publishing the indicators and for choosing the reference values for excessive imbalances. In so doing, it is required to notify – but not seek the authorisation of – the European Parliament, the Council and the European Economic and Social Committee. Secondly, the Commission is empowered to launch an in-depth review of a member state without seeking the approval of the Council or a prior decision on the existence of an excessive imbalance.²¹ In this sense, the Commission's delegation powers of economic surveillance have been strengthened under the Macroeconomic Imbalance Procedure. The underlying concept of delegation recalls Shapiro's (1981) 'logic of the triad', whereby individuals – in this case individual states – turn to a third party to assist in conflict resolution – in this case concerning the pursuit of economic imbalances that could be costly for all countries concerned. It also speaks even more directly to Tallberg's (2003) conception of the European Commission as a delegated monitor overseeing member states' respect of collective policy commitments.

Although the Macroeconomic Imbalance Procedure delegates new surveillance powers to the European Commission such powers should not be overstated. When it comes to enforcement, the new procedure is similar to the Broad Economic Policy Guidelines. When a member state faces imbalances, the Council, acting on a recommendation from the Commission, decides on the existence of excessive imbalances and on the issuance of a recommendation for corrective action. Similar procedures apply for assessing corrective action plans prepared by member states facing imbalances, for monitoring, for assessing corrective action itself and for

closing an excessive imbalance procedure, the Council retaining final say in all cases, albeit on the basis of a Commission recommendation. Qualified majority voting – which Weiler (1981) sees as a hallmark of, what he calls, decisional supranationalism – is the norm for Council decisions under the Macroeconomic Imbalance Procedure. More stringent still is the fact that a Commission proposal for a Council decision to impose either an interest-bearing deposit or fine against euro area members for persistently failing to submit a sufficient corrective action plan or take corrective action in response to Council recommendations will be carried unless it is opposed by a qualified majority of votes within the Council.²²

Bauer and Becker (2014) see reverse qualified majority voting as significantly strengthening the Commission's hand vis-à-vis the member states. Certainly it prevents a repeat of EU finance ministers' failure in November 2003 to back a Commission proposal to 'give notice' to France and Germany for their failure to take sufficient action to address excessive budget deficits. And yet, the scope for reverse qualified majority voting is much narrower under the macroeconomic imbalance procedure than it is under the Fiscal Compact, which introduces this decision rule for all stages of the excessive deficit procedure (Bauer and Becker 2014).

3. INTEGRATION AS LEGALISATION: ADVANTAGES, LIMITATIONS AND POSSIBILITIES

The Macroeconomic Imbalance Procedure, the preceding section suggested, entails a modest increase in legalisation. This finding is relevant for debates about legalisation but can we go one step further and conclude, on this basis, that the procedure entails a modest increase in integration? The principal benefit of thinking about European integration as legalisation is that the latter, as we have seen, rests on three dimensions

that are relatively straightforward to operationalise. Scholars can and will challenge the meaning of obligation, precision and delegation but such terms offer greater clarity than those at the centre of Ernst Haas and Leon Lindberg's classic definitions of integration. While there is some overlap, perhaps, between legalisation and Haas's notions of jurisdiction and obligation, he offers limited guidance on how we should assess these terms. Similarly, Lindberg's emphasis on the delegation of decision-making to 'new central organs' shows some affinity with legalisation's conception of delegation, but the former is loosely defined. Abbott et al.'s (2001) claim that legalisation is a narrower concept than institutionalisation (Sandholtz and Stone Sweet 1998), meanwhile, is borne out in this paper's analysis of the Macroeconomic Imbalance Procedure. There is some uncertainty as to whether the procedure can be counted as integration from an institutionalisation perspective but it appears to be a fairly straightforward case of legalisation.

In spite of its conceptual advantages, legalisation suffers from conceptual limitations that caution against a simple reduction of integration to this term. For one thing, legalisation overlooks the deliberative character of European integration, which scholars such as Uwe Puetter (2014) see as taking on an added significance in the post-Maastricht period. Deliberation was arguably an important feature of the Broad Economic Policy Guidelines, which provided a forum for policy-makers to exchange views on shared economic challenges (Deroose, Hodson, and Kuhlmann 2008, 833) and the Macroeconomic Imbalance Procedure arguably goes further by fostering closer interaction between EU and national officials in the context of in-depth reviews.²³ Legalisation's difficulties in discerning deliberation of this sort recall's Finnemore and Toope's (2001, 750) pointed criticism of legalisation for putting 'legal relationships and processes' ahead of law's normative role, including the fostering of

participation and 'legal forms of reasoning'. And yet, Abbott et al.'s (2001) understanding of legalisation assumes 'discourse framed in terms of reason, interpretation, technical knowledge, and argument, often followed by deliberation and judgment by impartial parties'. The authors do not elaborate on how legalisation might foster such deliberation, although their concern for access to deliberation and the extent to which institutions constrain policy-makers to make arguments in a way that they would not have to in a non-legal setting suggest fruitful avenues for concept development.

Another limitation of defining European integration as legalisation is that the latter is squarely focused on questions of institutional design rather than implementation. This reflects Abbott et al.'s (2001: 43) concern that defining legalisation in terms of the implementation of rules 'would make it impossible to inquire whether legalization increases rule implementation'. This restriction is intended to bring rigour but it sits uneasily in the field of International Relations, which is interested not only in why states create international organisations but in whether these bodies do what they are supposed to (Hawkins et al. 2006, 4). This broader focus is especially important for the study of European integration, for which a central research question is whether institutional factors deliver more integration than member states bargained for (Stone Sweet, Sandholtz, and Fligstein 2001; Pollack 2003).

One way forward is to modify the original definition of legalisation to distinguish between obligation, precision and delegation at the stages of design and implementation. Whereas obligation at the design stage concerns the extent to which states are bound through the formal creation of an institution by a rule or commitment, obligation at the implementation stage considers whether states find

their hands more tightly bound than anticipated once these rules or commitments are put into effect. Similarly, precision at the design stage captures the extent to which rules state clearly and unambiguously what is expected of a state, while precision at the implementation stage concerns the extent to which states are subject to more stringently applied rules or commitments than anticipated once these rules are enforced. Finally, whereas delegation at the design stage focuses on the extent to which states and other actors delegate authority to third parties to implement agreements, delegation at the implementation stage occurs when a third party assumes more authority in practice than anticipated when these institutional arrangements were created.

To put these conceptual modifications into practice, let us consider whether the implementation of the Macroeconomic Imbalance Procedure has produced greater legalisation than designed. A definitive assessment is premature because the Macroeconomic Imbalance Procedure had been in operation for less than five years at the time of writing. This caveat notwithstanding, there is little evidence that the implementation of the procedure has entailed any significant ex-post legalisation.

As regards obligation, research shows that the Commission can be overzealous in monitoring member states (see Tallberg 2003), but there is little sign of such overzealousness in the implementation of the Macroeconomic Imbalance Procedure. True, the Commission launched 74 in-depth reviews between 2012 and 2016. But the intensity of such surveillance was not incompatible with Regulation (EU) 1176/2011, which requires the Commission to conduct an in-depth review for *all* member states facing excessive imbalances or the risk thereof.²⁴

In-depth reviews undoubtedly imposed procedural obligations on the member states concerned. For example, Italy faced four in-depth reviews in the first four years

of the Macroeconomic Imbalance Procedure, which in each case involved face-to-face meetings between Commission officials and their counterparts from multiple ministries. Detailed questionnaires were submitted by the Commission in advance of these meetings, which resulted in the publication of comprehensive monitoring reports. The intrusiveness of such surveillance went well beyond anything seen under the Broad Economic Policy Guidelines. And yet, the degree of obligation entailed by the Macroeconomic Imbalance Procedure was not as onerous as it might have been. Although the Commission was not slow to trigger in-depth reviews, it chose not to initiate the corrective arm of the procedure between 2012 and 2016. As a consequence, no member state was deemed to be in a state of excessive imbalance by the Council or subject to penalties. Such leniency was consistent with the regulations underpinning the procedure but, by its own admission, the Commission made full use of ‘the inherent flexibility in the Macroeconomic Imbalance Procedure’.²⁵

Nor is there evidence of states facing greater levels of precision at implementation stage than anticipated when the procedure was designed. The first scoreboard for the Macroeconomic Imbalance Procedure, finalised by the Commission in February 2012, focused on ten well-defined economic indicators, which, as anticipated, brought much greater precision than the Broad Economic Policy Guidelines. Within two years, the Commission had added additional indicators on the financial sector and employment and social developments. This might have been justified on economic grounds but it made it more difficult to establish in a clear and unambiguous manner what is expected of member states. The same could be said of the Commission’s decision to publish nearly 30 auxiliary indicators.²⁶

Concerns that the Commission would adopt a mechanistic reading of the scoreboard did not come to pass. Indeed, at times, the Commission treaded with a

caution reminiscent of the Broad Economic Policy Guidelines. Of the countries subject to in-depth review in 2012 the Commission cited none for having excessive imbalances. This included Cyprus, which was adjudged to be facing imbalances that were ‘very serious’ but ‘not excessive’ in May 2012 even though it exceeded a number of the indicative thresholds (Commission 2012). The Commission’s reluctance to apply pressure in this instance was an opportunity missed given the banking crisis that erupted in Cyprus a matter of months later.

Turning finally to delegation, there is no evidence that the Commission unilaterally assumed more authority over the Macroeconomic Imbalance Procedure than foreseen when the instrument was created. If anything, the Commission appeared to be frustrated with the limits of its own authority to enforce the Macroeconomic Imbalance Procedure. This can be seen, for instance, in the Commission’s recommendation, in October 2015, for the establishment of national competitiveness boards.²⁷ A follow-up to the Five Presidents’ Report, the Commission’s recommendation called for each euro area member to identify one independent or functionally autonomous body to monitor competitiveness and feed into the Macroeconomic Imbalance Procedure. Such measures will take effect only if they win the backing of the Council and, as such, are an attempt to rewrite the legal rules governing delegation in this domain rather than circumvent them.

CONCLUSION

The Macroeconomic Imbalance Procedure has been variously treated as a major and minor step forward for European integration (Bauer and Becker 2012; Moschella 2014; Scharpf 2011). These wide discrepancies in interpretation speak to the fact that classic definitions of European integration from scholars such as Haas and Lindberg

are unwieldy, far from straightforward to operationalise, and skewed towards particular theoretical accounts of integration. EU studies' dependent variable problem is well documented but it is worsening as scholars struggle to explain in the post-Maastricht period whether European integration is slowing down or speeding up.

This paper has revisited legalisation – a concept familiar to students of International Relations and EU governance but largely overlooked by integration theorists – in response to these definitional difficulties. The Macroeconomic Imbalance Procedure, it showed, can be understood as a clear-cut but modest case of legalisation. The procedure scored higher along all three dimensions of legalisation compared to the Broad Economic Policy Guidelines, an earlier instrument of EU economic policy coordination. It involves greater procedural obligation insofar as the Macroeconomic Imbalance Procedure is underpinned by secondary legislation not found in relation to the Broad Economic Policy Guidelines. The Macroeconomic Imbalance Procedure is more precise than the Broad Economic Policy Guidelines, the former being backed by a scoreboard and a more detailed surveillance timetable, although the scoreboard's precision is limited by the Commission's discretion over devising and revising it. The procedure, finally, entails greater delegation to the Commission in relation to economic surveillance, particularly in relation to the procedure's scoreboard and in-depth reviews, than was the case with the Broad Economic Policy Guidelines. That said, the Council exerts a tight grip on the enforcement of the Macroeconomic Imbalance Procedure, which uses reverse qualified majority voting more sparingly than the new-look Stability and Growth Pact.

More rigorous though the concept of legalisation is compared to traditional definitions of integration, this paper has cautioned against a simplistic definition of

integration in terms of legalisation. Legalisation suffers from its own conceptual limitations, it is accepted, including its lack of attention to the deliberative dimension of decision-making and its preoccupation with institutional design rather than the effects of institutions, shortcomings that miss potentially important elements of integration. But the concept of legalisation put forward by Abbott et al. (2001, 19) was only ever intended as a ‘working definition’ to frame future research. A key finding of this paper is that there is scope for a conceptual reworking of legalisation to offer a better understanding of integration. The concepts of deliberation and legalisation are not as antithetical as sometimes suggested, although further reflection is required how the two interact. Reworking legalisation to understand the effects of institutions is also possible. To this end, this paper put forward the distinction between legalisation at the stages of design and implementation. Drawing on the early experience of implementing the Macroeconomic Imbalance Procedure, this paper found no evidence that the implementation of this procedure went beyond the degree of obligation, precision and delegation entailed by its design.

This analysis of the Macroeconomic Imbalance Procedure is not designed to explain why member states chose to legalise EU economic policy coordination in this way. Nor does it treat the procedure as in any way representative of the many other reforms to EU economic governance adopted in the light of the euro crisis. The aim rather has been to offer an explicit and systematic application of legalisation to a contested case of EU cooperation. The Macroeconomic Imbalance Procedure was by no means an easy case in this regard; the differences between it and the Broad Economic Policy Guidelines are, in some instances, quite subtle. But we cannot expect a single case to capture the complete complexities of integration. Understanding other reforms enacted in response to the euro crisis through a

legalisation lens highlights some interesting conceptual conundrums that require further reflection. These include whether delegation to bodies such as the Single Resolution Board and the recourse to international agreements such as the Fiscal Compact, though they are instances of legalisation, can be counted as cases of integration.

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- ² Article 2, Regulation (EU) No 1176/2011
- ³ For Odell (2001: 163), the ‘disciplined interpretive case study interprets or explains an event by applying a known theory to a new terrain’. Such a case should be judged not necessarily by its ability to test a theory but by how systematically and explicitly the theory is applied.
- ⁴ Recital 17, Regulation (EU) No 1176/2011
- ⁵ Article 103, Treaty of Maastricht
- ⁶ Article 121(3), Treaty on the Functioning of the European Union
- ⁷ Article 8, Regulation (EU) No 1176/2011
- ⁸ Article 13, Regulation (EU) No 1176/2011
- ⁹ This concept of precision is close to Kelemen’s (2011) idea of prescriptive rules, a key feature of Eurolegalism. See also Armstrong and Kilpatrick (2006, 675) who suggest that reducing detail in the interests of precision might undermine policy learning and so weaken rather than strengthen EU cooperation.
- ¹⁰ Article 2, Regulation (EU) No 1176/2011
- ¹¹ Article 3, Regulation (EU) No 1176/2011
- ¹² Article 4, Regulation (EU) No 1174/2011
- ¹³ Article 4, Regulation (EU) No 1176/2011
- ¹⁴ Article 4, Regulation (EU) No 1176/2011
- ¹⁵ Article 4, Regulation (EU) No 1176/2011
- ¹⁶ Protocol (No. 12) on the Excessive Deficit Procedure, Treaty on European Union
- ¹⁷ Article 2, Regulation (EU) No 1176/2011
- ¹⁸ Article 4, Regulation (EU) No 1176/2011
- ¹⁹ IMF Articles of Agreement, Sections 1 and 3.
- ²⁰ The Lisbon Treaty altered the terms of this qualified majority vote by stating that the votes of the member state concerned would not be taken into account (Article 121[4]).
- ²¹ Article 5, Regulation (EU) No 1174/2011
- ²² Article 2, Regulation (EU) No 1174/2011
- ²³ Article 6, Regulation (EU) No 1174/2011
- ²⁴ Article 5, Regulation (EU) No 1176/2011
- ²⁵ COM/2014/0905 final
- ²⁶ COM/2015/691 final
- ²⁷ COM/2015/0601 final